



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R07-OAR-2014-0163; FRL-9921-19-Region 7]**

**Approval and Promulgation of Implementation Plans; State of Iowa**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving revisions to the State Implementation Plan (SIP) for the state of Iowa. The purpose of these revisions is to update the Polk County Board of Health Rules and Regulations, Chapter V, Air Pollution. The revisions reflect updates to the Iowa statewide rules previously approved by EPA and will ensure consistency between the applicable local agency rules and Federally-approved rules. On April 15, 2014, the state notified EPA that it is withdrawing their request to approve greenhouse gases definition as relating to greenhouse gas emissions. This withdrawal request is in recognition of the July 12, 2013, U.S. Court of Appeals for the District of Columbia decision which vacated the regulation known as the "biogenic deferral rule." On October 31, 2014, the state requested that EPA withdraw their request to approve the definition of anaerobic lagoon.

**DATES:** This direct final rule will be effective [Insert date 60 days after date of publication in the **FEDERAL REGISTER**] without further notice, unless EPA receives adverse comment by [Insert date 30 days after date of publication in the **FEDERAL REGISTER**].

If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R07-OAR-2014-0163, by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.
2. Email: [Hamilton.heather@epa.gov](mailto:Hamilton.heather@epa.gov)
3. Mail or Hand Delivery: [Hamilton.heather@epa.gov](mailto:Hamilton.heather@epa.gov),  
Environmental Protection Agency, Air Planning and Development  
Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

*Instructions:* Direct your comments to Docket ID No. EPA-R07-OAR-2014-0163. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through [www.regulations.gov](http://www.regulations.gov) or email

information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in

[www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30 excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551-7039, or by email at [hamilton.heather@epa.gov](mailto:hamilton.heather@epa.gov)

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," or "our" refer to EPA. This section provides additional information by addressing the following questions:

- I. What is Being Addressed in this Document?
- II. Have the Requirements for Approval of a SIP Revision Been Met?
- III. What Action is EPA Taking?
- IV. Statutory and Executive Order Reviews

**I. What is Being Addressed in this Document?**

The State of Iowa has requested EPA approval of revisions to the local agency's rules and regulations, chapter V, "Air Pollution," as a revision to the SIP. In order for the local program's "Air Pollution" rules to be incorporated into the Federally-enforceable SIP, on behalf of the local agency, the

state must submit the formally adopted regulations and control strategies, which are consistent with the state and Federal requirements, to EPA for inclusion in the SIP. The regulation adoption process generally includes public notice, a public comment period and a public hearing, and formal adoption of the rule by the state authorized rulemaking body. In this case, that rulemaking body is the local agency. After the local agency formally adopts the rule, the local agency submits the rulemaking to the state, and then the state submits the rulemaking to EPA for consideration for formal action (inclusion of the rulemaking into the SIP). EPA must provide public notice and seek additional public comment regarding the proposed Federal action on the state's submission.

EPA received the request from the state to adopt revisions to the local air agency rules into the SIP on September 20, 2013. The revisions were adopted by the local agency on July 30, 2013, and became effective on August 5, 2013. EPA is approving the requested revisions to the Iowa SIP relating to the following:

- Article I. In General, Section 5-1. Purpose and Ambient Air Quality Standards;
- Article I. In General, Section 5-2. Definitions;

- Article II. Authority, Section 5-3. Duties of Health Officer;
- Article II. Authority, Section 5-4. Powers of Health Officer;
- Article III. Incinerator and Open Burning, Section 5-7. Open Burning Prohibited;
- Article VII. Performance Test for Stack Emission Test, Section 5-18. Testing and Sampling of New and Existing Equipment;
- Article X. Permits, Division 1. Construction Permits, Section 5-31. Issuance of Permit;
- Article X. Permits, Division 1. Construction Permits, Section 5-33. Exemptions from Permit Requirements;
- Article X. Permits, Division 1. Construction Permits, Section 5-34. Construction Permit Filing/Review Fees;
- Article X. Permits, Division 1. Construction Permits, Section 5-35.1. Annual/Operating Permit Fees;
- Article X. Permits, Division 2. Operating Permits, Section 5-39. Exemptions from Permit Requirement;
- Article X. Permits, Division 2. Operating Permits, Section 5-50. Evidence used in establishing that a violation has or is occurring;

- Article XI. Compliance Schedules, Section 5-56. Compliance Schedules Required;
- Article XI. Compliance Schedules, Section 5-57. Progress Reports Required.

EPA's action does not cover revisions to:

- Article I. In General, Section 5-2. Definitions; Anaerobic Lagoon and Greenhouse Gases;
- Article III. Incineration and Open Burning, Section 5-7(d), Variance Application;
- Article VI. Sections 5-16 (n), (o), and (p) which pertain to New Source Performance Standards (NSPS);
- Article VIII. which pertain to National Emission Standards Hazardous Air Pollutants (NESHAPS);
- Article X. Permits, Division 1. Construction permits, Section 5-35. Operating Permit Required.

On April 15, 2014, the state amended their request and notified EPA that it is withdrawing their requests to approve section 5-1 of article I to adopt greenhouse gases definition and section 5-35 (b) (5) of article X relating to greenhouse gas emissions. This withdrawal request is in recognition of the July 12, 2013 U.S. Court of Appeals for the District of Columbia decision which vacated the regulation known as the "biogenic

deferral rule" (No. 11-1101 (D.C. Cir, July 12, 2013)). On October 31, 2014, the state requested that EPA withdraw their request to approve the definition of anaerobic lagoon.

**II. Have the Requirements for Approval of a SIP Revision Been Met?**

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V.

**III. What Action is EPA Taking?**

We are taking direct final action to approve the amendments to the Polk County Board of Health Rules and Regulations, Chapter V, "Air Pollution." The local agency routinely revises its "Air Pollution" regulations to be consistent with the Federally-approved Iowa Administrative Code. The state amended their request and notified EPA that it is withdrawing their requests to approve section 5-1 of article I to adopt greenhouse gases definition and section 5-35 (b)(5) of article X relating to greenhouse gas emissions. This withdrawal request is in recognition of the July 12, 2013, U.S. Court of Appeals for the District of Columbia decision which vacated the regulation known as the "biogenic deferral rule" (No. 11-1101 (D.C. Cir, July 12, 2013)). On October 31, 2014, the state requested that EPA



withdraw their request to approve the definition of anaerobic lagoon.

The local agency's "Air Pollution" rules are consistent with state and Federal regulations and are revised as follows: Article I, section 5-1(c) is revised to cite the cross reference to state-approved rules at (455B). Definitions are added to section 5-2 as follows: Country grain elevator; Department; Director or his designee; Emergency generator; Grain processing; Grain storage elevator, and Maximum achievable control technology (MACT) floor. The definitions to EPA reference method; Particulate matter, and Potential to emit are revised.

Article II, sections 5-3 and 5-4, addresses the duties and powers of the health officer and is revised to change the term "board of health" to "health officer."

Article III addresses incineration and open burning, and is reorganized to include the headings "prohibition," "burn permits," and "exemptions." Section 5-7 (b) "burn permits" is revised to include an expanded explanation of training fires, and the conditions that must be met to prior to conducting such a fire. Section 5-7(c) "exemptions" is revised to include the exemption of fireplaces or grills, outdoor patio heaters, and recreational bonfires, fireplaces and grills.

Article VII, section 5-18 revises performance test for stack emission test as it relates to new and existing equipment, and details testing procedures. Reference methods are amended to reflect the most current Federal revisions.

Article X, division 1, Construction Permits, section 5-31 language is revised to state each permit shall not be transferable from one piece of equipment to another. A paragraph is added to provide detailed information with regard to written notification prior to transferring equipment to a new location.

Article X, section 5-33, Exemptions from Permit Requirements amends equipment used for cultivating land, harvesting crops, or raising livestock other than anaerobic lagoons; incinerators and paint hook burn-off ovens with a manufacturer's design capacity less than 25 pounds per hour; internal combustion engine burning exclusively natural gas or propane with a brake horsepower rating of less than 100 measures at the shaft; production welding, and new or modified welding operation limitations for solder containing lead.

The final revision in article X, division I, is in section 5-34, Construction Permit filing/review fees, revises the accurate name of the Air Quality Division and states that permit fees will become part of the Air Quality Enterprise fund. A paragraph is being added to describe the circumstances

investigation fees are paid for work that has commenced prior to obtaining a permit.

Article X, Permits, division 2, Operating Permits, section 5-35.1, Annual/Operating Permit Fees, removes the exemption for certain applicants and accurately identifies who to pay fees to, as well as stating the fees will become part of the Air Quality Enterprise fund.

Article X, section 5-39, amends subparagraph (a)(1) which refers to incinerators, and is revised to remove pyrolysis cleaning furnaces and add paint hook burn-off ovens. Incinerators installed in a single family dwelling is removed and a sentence is added to state that combustible material shall not contain lead. Subparagraph (a)(43) Production Welding, is revised to acceptable specifications for Gas Metal Arc Welding to 12,500 pounds per year, and Shielded Metal Arc Welding to 1,600 pounds per year. Subparagraph (a)(44) is amended to add that new or modified welding operations will be limited to 37,000 pounds per year of lead-containing solder. Two new paragraphs are added as exemptions at (a)(51), equipment used for cultivating land, harvesting crops, or raising livestock other than anaerobic lagoons, and (a)(52) internal combustion engine burning exclusively natural gas or propane with a brake horsepower rating of less than 100 measures at the shaft.

Article X, section 5-50, is amended to add two new subsections. The first subsection addresses methods of presumptively credible evidence of whether a violation has occurred at a source that includes a monitoring method approved for the source and incorporated in an operating permit; compliance test methods, and, testing or monitoring methods approved for the source in an issued construction permit. The second subsection addresses presumptively credible testing, monitoring or information-gathering methods that include any monitoring or testing methods provided in the Polk County rules, or, other testing, monitoring or information-gathering methods that produce information comparable to that produced by any above.

Article XI, Compliance Schedules, section 5-56, Compliance Schedules Required is amended to clarify the time (30 days) in which the health officer determines in writing that satisfactory progress towards the elimination or prevention of air pollution is made. Administrative changes are also made to this section.

Article XI, section 5-57, is amended to make administrative changes and to add that on the determination of unsatisfactory progress, the health office may deny or suspend the compliance schedule and institute appropriate legal proceedings to enforce this chapter (referring to Polk County Board of Health Rules and

Regulations, Chapter V, Air Pollution). Additional information on the details of the Polk County revisions, which are being approved, is found in the Technical Support Document in the docket of this rulemaking.

We are publishing this rule without a prior proposed rule because we view this as a noncontroversial amendment and anticipate no adverse comment because the revisions are largely administrative and consistent with Federal regulations. However, in the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the SIP revision if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the

Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9,

2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days after date of publication in the **FEDERAL REGISTER**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not



postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Lead, Reporting and recordkeeping requirements.

Dated: December 19, 2014.

Karl Brooks,  
Regional Administrator,  
Region 7.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as set forth below:

**PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

**Subpart Q - Iowa**

2. In §52.820, the table in paragraph (c) is amended by revising the entry for "CHAPTER V" to read as follows:

**§52.820 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA-APPROVED IOWA REGULATIONS**

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources Environmental Protection Commission [567]				
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<b>Polk County</b>				
CHAPTER V	Polk County Board of Health Rules and Regulations Air Pollution Chapter V	08/05/13	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register citation]</u>	Article I, Section 5-2, definition of "variance," "anaerobic lagoon," and "greenhouse gases"; Article III, Incineration and Open Burning, Section 5-7(d) Variance Application; Article VI, Sections 5-16(n), (o) and (p); Article VIII; Article IX, Sections 5-27(3) and (4); Article X, Section 5-28, subsections (a)

				<p>through (c), and Article X, Section 5-35(b)(5); Article XIII; and Article XVI, Section 5-75 are not part of the SIP. Article VI, Section 5-17, adopted by Polk County on 7/26/2011, is not part of the SIP, and the previously approved version of Article VI, Section 5-17 remains part of the SIP.</p>
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[FR Doc. 2015-00079 Filed 01/09/2015 at 8:45 am; Publication Date: 01/12/2015]